RECORD AND BRIEFS

FILED
MAR 20 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 16-349

In the Supreme Court of the United States

RICKY HENSON, ET AL., PETITIONERS

v.

SANTANDER CONSUMER USA INC.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT

MATTHEW A. FITZGERALD
KATHERINE MIMS CROCKER
MCGUIREWOODS LLP
800 East Canal Street
Richmond, VA 23219

KANNON K. SHANMUGAM
Counsel of Record
ALLISON JONES RUSHING
MASHA G. HANSFORD
BARRETT J. ANDERSON
MENG JIA YANG*
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
kshanmugam@wc.com

* Admitted in California and practicing law in the District of Columbia pending application for admission to the D.C. Bar under the supervision of bar members pursuant to D.C. Court of Appeals Rule 49(c)(8).

QUESTION PRESENTED

The Fair Debt Collection Practices Act provides that an entity qualifies as a "debt collector" subject to the Act if, *inter alia*, it "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. 1692a(6). The question presented is as follows:

Whether an entity qualifies as a "debt collector" under the foregoing definition when it has purchased a debt portfolio from another entity, including debts that are in default, and is attempting to collect those debts for its own account.

CORPORATE DISCLOSURE STATEMENT

Respondent Santander Consumer USA Inc. is wholly owned by Santander Consumer USA Holdings Inc., a publicly held company. Santander Consumer USA Holdings Inc. has no parent corporation, and Santander Holdings USA, Inc. (a subsidiary of Banco Santander, S.A.), owns 10% or more of its stock.

TABLE OF CONTENTS

Page

Opinions below 1

Jurisdiction 1

Statutory provisions involved 2

Statement 2

A. Background 3

B. Facts and procedural history 6

Summary of argument 11

Argument 15

I. An entity does not qualify as a 'debt collector' under the FDCPA simply by purchasing debts from another entity and then attempting to collect those debts for its own account 15

A. Under the plain text of the relevant definition of 'debt collector,' an entity attempting to collect a debt it owns for its own account is not attempting to collect a debt 'owed or due another' 16

B. Petitioners' alternative interpretation of the relevant definition of 'debt collector' is contrary to the plain text 24

C. The purported anomalies petitioners identify with the plain-text interpretation are illusory 30

D. Petitioners' policy arguments lack merit and do not overcome the plain text 36

II. The Court should reject petitioners' alternative argument that respondent qualifies as a 'debt collector' because it regularly services debts for others 45

Conclusion 49

TABLE OF AUTHORITIES

Page

Cases:

Absolute Power System, Inc. v. *Cummins, Inc.*, Civ. No. 15-8539, 2016 WL 6897782 (D.N.J. Nov. 23, 2016) 46
Alibrandi v. *Financial Outsourcing Services, Inc.*, 333 F.3d 82 (2d Cir. 2003) 40
Barrett v. *United States*, 423 U.S. 212 (1976) 18
Bridge v. *Ocwen Federal Bank, FSB*, 681 F.3d 355 (6th Cir. 2012) 25
Carter v. *AMC, LLC*, 645 F.3d 840 (7th Cir. 2011) 31, 32
Coulthard v. *Trott & Trott, P.C.*, Civ. No. 12-13601, 2013 WL 12119567 (E.D. Mich. Nov. 25, 2013), *report and recommendation adopted*, 2014 WL 12573975 (Mar. 31, 2014) 46
Dan's City Used Cars, Inc. v. *Pelkey*, 133 S. Ct. 1769 (2013) 36
Davidson v. *Capital One Bank (USA), N.A.*, 797 F.3d 1309 (11th Cir. 2015) 10
Dodd v. *United States*, 545 U.S. 353 (2005) 36
Dole Food Co. v. *Patrickson*, 538 U.S. 468 (2003) 22
Eke v. *FirstBank Florida*, 779 F. Supp. 2d 1354 (S.D. Fla. 2011) 32
Federal Communications Commission v. *AT&T Inc.*, 562 U.S. 397 (2011) 20
Federal Trade Commission v. *Check Investors, Inc.*, 502 F.3d 159 (3d Cir. 2007), cert. denied, 555 U.S. 1011 (2008) 25
Franceschi v. *Mautner-Glick Corp.*, 22 F. Supp. 2d 250 (S.D.N.Y. 1998) 32
Great-West Life & Annuity Insurance Co. v. *Knudson*, 534 U.S. 204 (2002) 18
Heintz v. *Jenkins*, 514 U.S. 291 (1995) 31
Ingalls Shipbuilding, Inc. v. *Director, Office of Workers' Compensation Programs*, 519 U.S. 248 (1997) 21

Page

Cases—continued:

Jerman v. *Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573 (2010) 5
Kirtsaeng v. *John Wiley & Sons, Inc.*, 133 S. Ct. 1351 (2013) 31
Kramer v. *Time Warner Inc.*, 937 F.2d 767 (2d Cir. 1991) 47
Mertes v. *Devitt*, 734 F. Supp. 872 (W.D. Wis. 1990) 46
Miller v. *BAC Home Loans Servicing, L.P.*, 726 F.3d 717 (5th Cir. 2013) 25
Perry v. *Stewart Title Co.*, 756 F.2d 1197 (5th Cir. 1985) 25
Price Waterhouse v. *Hopkins*, 490 U.S. 228 (1989) 22, 23
Puerto Rico v. *Franklin California Tax-Free Trust*, 136 S. Ct. 1938 (2016) 17
Ruth v. *Triumph Partnerships*, 577 F.3d 790 (7th Cir. 2009) 25
Schlegel v. *Wells Fargo Bank, N.A.*, 720 F.3d 1204 (9th Cir. 2013) 10
Schlosser v. *Fairbanks Capital Corp.*, 323 F.3d 534 (7th Cir. 2003) 25
Schroyer v. *Frankel*, 197 F.3d 1170 (6th Cir. 1999) 46, 47
Sebelius v. *Cloer*, 133 S. Ct. 1886 (2013) 24
Sprint Communications Co., L.P. v. *APCC Services, Inc.*, 554 U.S. 269 (2008) 29, 30
Strasters v. *Weinstein & Riley PS*, 500 Fed. Appx. 682 (9th Cir. 2012) 46

Statutes:

Consumer Financial Protection Act of 2010 (Dodd-Frank Act), Pub. L. No. 111-203, 124 Stat. 1376 41
12 U.S.C. 5481(6)(A) 41
12 U.S.C. 5531(a) 41
12 U.S.C. 5536(a)(1) 41
Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541 31

Page

Statutes—continued:

Fair Credit Reporting Act, 15 U.S.C. 1681-1681x 41
15 U.S.C. 1681s-2 41
Fair Debt Collection Practices Act,
15 U.S.C. 1692-1692p ..... *passim*
15 U.S.C. 1692(a) 3
15 U.S.C. 1692(e) 4
15 U.S.C. 1692a(4) ..... *passim*
15 U.S.C. 1692a(6) ..... *passim*
15 U.S.C. 1692a(6)(A)-(F) 4, 16
15 U.S.C. 1692a(6)(F) 33, 34
15 U.S.C. 1692a(6)(F)(ii) 12, 20, 21, 25
15 U.S.C. 1692a(6)(F)(iii) ..... *passim*
15 U.S.C. 1692a(6)(F)(iv) 13, 32, 33
15 U.S.C. 1692c 5
15 U.S.C. 1692d 5
15 U.S.C. 1692e 5
15 U.S.C. 1692f 5
15 U.S.C. 1692g(a)(2) 19
15 U.S.C. 1692g(a)(5) 19
15 U.S.C. 1692k 5
15 U.S.C. 1692k(a) 5
15 U.S.C. 1692k(a)(2) 5
15 U.S.C. 1692k(c) 5
15 U.S.C. 1692*l*(a) 5
15 U.S.C. 1692*l*(b)(6) 5
Federal Trade Commission Act, 15 U.S.C. 41-58 41
15 U.S.C. 45(a)(1) 41
15 U.S.C. 45(a)(2) 41
Longshore and Harbor Workers' Compensation Act,
33 U.S.C. 901-950 21
33 U.S.C. 933(g)(1) 21
Truth in Lending Act, 15 U.S.C. 1601-1667f 41
15 U.S.C. 1602(f) 20
15 U.S.C. 1602(g) 41
15 U.S.C. 1631 41
18 U.S.C. 922(h) 18

Page

Statutes—continued:

28 U.S.C. 1254(1) 1
28 U.S.C. 1441(d) 22
28 U.S.C. 1603(b)(2) 22
42 U.S.C. 2000e-2(a) 22
N.H. Rev. Stat. Ann. § 358-C:1 37
W. Va. Code Ann. § 46A-2-122(c) 37
W. Va. Code Ann. § 46A-2-122(d) 37

Miscellaneous:

American Heritage Dictionary of the English Language (4th ed. 2000) 23, 31
Sylvia Chalker & Edmund Weiner, *Oxford Dictionary of English Grammar* (1994) 26
Consumer Financial Protection Bureau, *Ask CFPB—Mortgages* <tinyurl.com/askcfpb> (last visited Mar. 20, 2017) 6
Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act: CFPB Annual Report 2014* (Mar. 2014) <tinyurl.com/2014cfpbannualreport> 6
Consent Decree, *United States* v. *Capital Acquisitions & Management Corp.*, Civ. No. 04-50147 (N.D. Ill. Mar. 24, 2004) <tinyurl.com/capitaldecree> 42
Consent Order, *In re Encore Capital Group, Inc.*, No. 2015-22 (C.F.P.B. Sept. 9, 2015) <tinyurl.com/encoredecree> 42
Consent Order, *In re Portfolio Recovery Associates, LLC*, No. 2015-23 (C.F.P.B. Sept. 9, 2015) <tinyurl.com/portfoliodecree> 42
Federal Trade Commission, *Making Payments to Your Mortgage Servicer* (June 2010) <tinyurl.com/ftcmakingpayments> 6
Federal Trade Commission, *The Structure and Practices of the Debt Buying Industry* (Jan. 2013) <tinyurl.com/structureandpractices> ... 6, 43

Page

Miscellaneous—continued:

Bryan A. Garner, *Garner's Dictionary of Legal Usage* (3d ed. 2011) 17, 23
Bryan A. Garner, *Garner's Modern English Usage* (4th ed. 2016) 17, 26, 27
H.R. Rep. No. 131, 95th Cong., 1st Sess. (1977) 3, 4, 37, 38
Merriam-Webster Dictionary (2005) 23
Merriam-Webster's Collegiate Dictionary (10th ed. 1993) 23
Oxford English Dictionary (2d ed. 1989) 31
Pam Peters, *Cambridge Guide to English Usage* (2004) 26
Restatement (Second) of Contracts § 317(1) (1981) 29
Antonin Scalia & Bryan A. Garner, *Reading Law* (2012) 33
S. Rep. No. 382, 95th Cong., 1st Sess. (1977) ..... *passim*

In the Supreme Court of the United States

No. 16-349

RICKY HENSON, ET AL., PETITIONERS

v.

SANTANDER CONSUMER USA INC.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-20a) is reported at 817 F.3d 131. The opinion of the district court (Pet. App. 21a-40a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 23, 2016. A petition for rehearing was denied on April 19, 2016 (Pet. App. 41a-42a). The petition for a writ of certiorari was filed on September 16, 2016, and granted on January 13, 2017. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The Fair Debt Collection Practices Act, 15 U.S.C. 1692-1692p, is reproduced in an appendix to petitioners' brief.

STATEMENT

This case presents a straightforward question of statutory interpretation concerning the definition of "debt collector" under the Fair Debt Collection Practices Act (FDCPA). The FDCPA prohibits certain conduct in the collection of debts by a "debt collector." It defines a "debt collector" as any person who, *inter alia*, "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. 1692a(6).

Respondent is a consumer-finance company that purchased a large portfolio of car loans, including loans made to petitioners that were in default. Respondent subsequently attempted to collect petitioners' debts for its own account. As is relevant here, petitioners sued respondent, alleging that it had violated various provisions of the FDCPA in attempting to collect those debts.

Respondent moved to dismiss the complaint on the ground that it was not a "debt collector" under the FDCPA. The district court granted the motion, and the court of appeals affirmed. The court of appeals held that, because respondent owned the debts at issue, it was not attempting to collect debts "owed or due * * * another" and thus could not qualify as a "debt collector" under the foregoing definition. The court of appeals' holding was correct, and its judgment should therefore be affirmed.

A. Background

1. The FDCPA was enacted in 1977 in response to the use of "abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. 1692(a); see Pub. L. No. 95-109, 91 Stat. 874 (1977). The "prime source of egregious collection practices," and thus the "primary persons intended to be covered" by the statute, were "independent debt collectors." S. Rep. No. 382, 95th Cong., 1st Sess. 2, 3 (1977). Independent debt collectors "constitute[d] an industry separate from creditors" because, "[u]nlike creditors, they d[id] not offer to sell any product or service to consumers"; instead, "[their] business [was] the collection of debts." H.R. Rep. No. 131, 95th Cong., 1st Sess. 7 (1977).

While creditors and independent debt collectors alike "collect[ed] * * * overdue accounts," H.R. Rep. No. 131, *supra*, at 7, Congress was particularly concerned about independent debt collectors for two reasons. First, unlike creditors, independent debt collectors "[were] likely to have no future contact with the consumer and often [were] unconcerned with the consumer's opinion of them," making them particularly prone to engage in abusive practices. S. Rep. No. 382, *supra*, at 2.

Second, abusive practices by independent debt collectors had proven difficult to regulate before the FDCPA. Such debt collectors were generally small and short-lived, see S. Rep. No. 382, *supra*, at 2, whereas "[c]reditors * * * [we]re usually larger and more stable," H.R. Rep. No. 131, *supra*, at 7. As a result, "if a Federal agency such as the Federal Trade Commission t[ook] action against a major creditor, it usually ha[d] a deterrent effect throughout the industry." *Ibid.* But that was "not the case" with the debt-collection industry, because "small debt collection agencies * * * [could] easily go out of business after suit by the Commission," such that suing even "15 or

20 individual debt collection agencies d[id] not change industrywide practices." *Ibid.*

When Congress enacted the FDCPA, therefore, it did not simply proscribe certain debt-collection practices; it proscribed those practices only when they were committed by a targeted group of "debt collectors." 15 U.S.C. 1692(e). The FDCPA defines a "debt collector" as any person who falls into one of three categories. First, and most significantly, the FDCPA reaches any person who is engaged in "any business the principal purpose of which is the collection of any debts." 15 U.S.C. 1692a(6). Second, and of relevance here, the FDCPA reaches any person who "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." *Ibid.* And third, the FDCPA reaches "any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts." *Ibid.*[1]

The FDCPA proceeds to exclude certain persons and activities from the foregoing categories of "debt collector." See 15 U.S.C. 1692a(6)(A)-(F). Of particular relevance to petitioners' argument here, the FDCPA provides that "debt collector" does not include "any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity * * * concerns a debt which was not in default at the time it was obtained by such person." 15 U.S.C. 1692a (6)(F)(iii).

---

[1] A "creditor," in turn, is "any person who offers or extends credit creating a debt or to whom a debt is owed." 15 U.S.C. 1692a(4). That term excludes "any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another." *Ibid.*

The substantive provisions of the FDCPA bar "debt collectors" from engaging in certain conduct. For example, in provisions currently at issue in another case before this Court, the FDCPA prohibits debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt," 15 U.S.C. 1692e, and from using "unfair or unconscionable means to collect or attempt to collect any debt," 15 U.S.C. 1692f. See *Midland Funding, LLC* v. *Johnson*, No. 16-348 (argued Jan. 17, 2017). Each of those provisions proscribes a host of specific practices. See 15 U.S.C. 1692e, 1692f. The FDCPA also prohibits debt collectors from communicating with consumers at particular times or places or in particular manners, see 15 U.S.C. 1692c, 1692d, and from more generally "engag[ing] in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt," 15 U.S.C. 1692d.

The FDCPA may be enforced by the Federal Trade Commission (FTC), the Consumer Financial Protection Bureau (CFPB), or private plaintiffs. See 15 U.S.C. 1692k, 1692*l*(a), 1692*l*(b)(6). The defendant's state of mind is not ordinarily an element of liability under the FDCPA. See 15 U.S.C. 1692k(c). Instead, the statute provides an affirmative defense where a violation "was not intentional and resulted from a bona fide error." *Ibid.*; see *Jerman* v. *Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 584-586 (2010). Successful private plaintiffs are entitled to actual damages and costs, including attorney's fees. See 15 U.S.C. 1692k(a). Regardless of the existence of actual damages, plaintiffs may also receive statutory damages of up to $1,000 in an individual action or up to $500,000 in a class action. See 15 U.S.C. 1692k(a)(2).

2. In the four decades since the FDCPA was enacted, there have naturally been changes in how consumer debt

is held in the United States. In particular, consumer loans are now often bought and sold after origination (that is, after the debt was originally created). See FTC, *The Structure and Practices of the Debt Buying Industry* 12 (Jan. 2013) (*Structure and Practices*) <tinyurl.com/structureandpractices>; FTC, *Making Payments to Your Mortgage Servicer* (June 2010) (*Making Payments*) <tinyurl.com/ftcmakingpayments>.

Most obviously, the originator (the entity that originally extended credit) may transfer ownership of a debt or portfolio of debts. See CFPB, *Fair Debt Collection Practices Act: CFPB Annual Report 2014*, at 7 (Mar. 2014) <tinyurl.com/2014cfpbannualreport>. The purchaser may retain the purchased debts and collect them itself; "place the debts with third-party collectors"; or "resell the debts to other debt buyers." *Ibid.*

Short of a complete transfer of ownership, the originator (or a subsequent owner) may also transfer the right to service the debt. A debt servicer "handles the day-to-day tasks of managing [the] loan," such as processing payments, responding to borrower inquiries, and, in the case of home loans, managing the escrow account. CFPB, *Ask CFPB—Mortgages* <tinyurl.com/askcfpb> (last visited Mar. 20, 2017). As petitioners acknowledge, a debt servicer can acquire the right to service the debt—including the right to collect payments—without acquiring ownership of the underlying debt. See Br. 8 n.9; FTC, *Making Payments*, *supra*.

B. Facts And Procedural History

1. Respondent is a consumer-finance company that specializes in car loans. It is one of the Nation's largest automotive lenders, issuing and servicing thousands of car loans every year. Respondent is indirectly majority-

owned by Banco Santander, one of the world's largest and most respected banks. Pet. App. 28a.

While respondent primarily issues and services car loans directly to consumers or through dealers, it has occasionally acquired portfolios of car loans from other consumer-finance companies; this case arises from one of those acquisitions. As alleged in the complaint, petitioners, four individuals, obtained loans from CitiFinancial Auto to finance car purchases in Maryland and later defaulted. CitiFinancial Auto repossessed and sold petitioners' cars, leaving an outstanding balance on each of their accounts. J.A. 20-22; Pet. App. 5a.

A group of plaintiffs brought a class action against CitiFinancial Auto, claiming that it had violated Maryland law when it conducted certain repossessions. Petitioners were members of the class. The parties to the class action ultimately reached a settlement, under which CitiFinancial Auto agreed to waive the outstanding balances of the class members. J.A. 22-23.

Before the settlement, CitiFinancial Auto had sold respondent a $3.2 billion portfolio of car loans, and it had hired respondent as a servicer for an additional portfolio of car loans, including petitioners'. CitiFinancial Auto later sold respondent an additional $3.55 billion portfolio of car loans, including petitioners'. The portfolio contained not just defaulted loans, such as petitioners', but also non-defaulted loans. Under the terms of the settlement, class members released all claims against CitiFinancial Auto, but retained the right to bring claims against respondent or others arising from any attempts to collect their accounts after respondent had acquired the debt portfolio. J.A. 23; Pet. App. 5a; Resp. C.A. Br. 56.

2. In 2012, petitioners filed a class action against respondent and two third-party debt collectors in the United States District Court for the District of Maryland.

Petitioners alleged that, after respondent purchased their loans, it hired the third-party debt collectors to collect them. Petitioners further alleged that respondent and the third-party debt collectors violated various provisions of the FDCPA by misrepresenting the amounts owed, their authority to collect the debts, and the identity of the debts' owner. J.A. 23-29; Pet. App. 5a-6a.

As is relevant here, respondent moved to dismiss the complaint on the ground that it was not a "debt collector" under the FDCPA. The district court granted the motion. Pet. App. 26a-35a.[2]

The district court began by observing that there was "no plausible allegation" that the "principal purpose" of respondent's business was debt collection, because petitioners had admitted that respondent "issues and services tens of thousands of car loans each year." Pet. App. 28a (internal quotation marks, citation, and emphases omitted). As a result, respondent did not qualify under the first category of "debt collector" in the FDCPA. *Ibid.* The court thus focused on the second statutory category—specifically, on whether respondent "regularly collects or attempts to collect * * * debts owed or due * * * another." *Ibid.*

The district court proceeded to hold that respondent did not qualify as a "debt collector" under that category either. Pet. App. 28a-35a. The court noted that, as alleged by petitioners, respondent had "owned the debt[s] at all times during its collection activities." *Id.* at 30a. The court reasoned that respondent was therefore a creditor "collecting debts in [its] own name[]," rather than a "debt

---

[2] The third-party debt collectors also moved to dismiss the complaint; the district court granted the motion as to one of the debt collectors and stayed the case as to the other. Pet. App. 36a-40a. Petitioners did not appeal those rulings.

collector." *Id.* at 27a. The court specifically rejected petitioners' contention that "a debt[] buyer is necessarily a 'debt collector' when [it] acquire[s] debt in default." *Id.* at 32a. The mere allegation that respondent had purchased defaulted debt, the court explained, was insufficient to "create a plausible cause of action." *Id.* at 33a.

3. The court of appeals unanimously affirmed. Pet. App. 1a-20a. It held that petitioners' interpretation of the second category of "debt collector" "ultimately stands in tension with its plain language." *Id.* at 8a.

At the outset, the court of appeals considered and rejected petitioners' contention, based on the exclusion in Section 1692a(6)(F)(iii), that "*the default status of debt* determines whether a purchaser of debt, such as [respondent], is a debt collector." Pet. App. 8a. The court reasoned that such an approach "turns the statutory provision upside down," because it "fail[s] to address whether [respondent] fits under any definition of 'debt collector' before addressing whether the (F)(iii) exclusion applies." *Id.* at 8a, 14a. And under the second category of "debt collector," the court explained, "the default status of a debt has no bearing on whether a person qualifies as a debt collector." *Id.* at 8a. Instead, the critical inquiry is "whether a person collects debt *on behalf of another* or *for its own account*." *Ibid.*

The court of appeals concluded that respondent could not qualify under the second category of "debt collector," because the complaint "specifically and unambiguously" alleged that "the debts that [respondent] was collecting were owed to it, [respondent], not to another." Pet. App. 13a. At that point, "the analysis ends, and the exclusions from the definition of debt collector, on which [petitioners] rely, have no significance." *Id.* at 14a.

The court of appeals also rejected petitioners' contention that the reference in the second category to "debts

owed or due * * * another" was ambiguous because it could refer either to debts that were owed or due another "at the time of the *collection activity*" or to debts that were owed or due another "when they were first *incurred*." Pet. App. 17a. The court reasoned that, "[i]nsofar as Congress was regulating debt-collector conduct, defining the term 'debt collector' to include a person who regularly collects debts owed to another, it had to be referring to debts as they existed *at the time of the conduct* that is subject to regulation." *Id.* at 17a-18a (citing *Davidson* v. *Capital One Bank (USA), N.A.*, 797 F.3d 1309, 1318 (11th Cir. 2015), and *Schlegel* v. *Wells Fargo Bank, N.A.*, 720 F.3d 1204, 1209 (9th Cir. 2013)).

The court of appeals dismissed petitioners' assertion that its interpretation would create an unintended loophole in the FDCPA for entities that purchase debt they previously serviced. Pet. App. 18a-19a. Petitioners had argued that, "because [respondent] had [previously] been a debt collector with respect to their loans, it remained a debt collector after it purchased their loans," as though its status as a "debt collector" were immutable. *Id.* at 18a. But the court reasoned that Congress did not intend to reach an entity when it "acts to collect its own debts." *Id.* at 19a.

The court of appeals also rejected two additional contentions that petitioners no longer advance before this Court. First, the court of appeals rejected the contention that respondent must be a "debt collector" because it did not qualify as a "creditor" under the FDCPA (and because "the two terms * * * are mutually exclusive"). Pet. App. 7a. The court reasoned that respondent did in fact qualify as a "creditor" because it was a person "to whom a debt is owed." *Id.* at 15a-16a (quoting 15 U.S.C. 1692a(4)). Second, the court rejected the contention that the word "another" in the phrase "debts owed or due or

asserted to be owed or due another" was the object only of "asserted to be owed or due" and not of "owed or due." *Id.* at 16a-17a. The court explained that the phrase was a "singular statutory phrase" and that the word "another" thus applied to both types of debts. *Ibid.*

4. The court of appeals subsequently denied rehearing without recorded dissent. Pet. App. 41a-42a.

SUMMARY OF ARGUMENT

I. The court of appeals correctly held that an entity does not qualify as a "debt collector" for purposes of the FDCPA simply by purchasing debts from another entity and then attempting to collect those debts for its own account. The judgment of the court of appeals should therefore be affirmed.

A. The relevant provision of the FDCPA defines a "debt collector" as any person who "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. 1692a(6). As a matter of basic grammar, the phrase "debts owed or due or asserted to be owed or due another" is the object of the present-tense verbs "collects or attempts to collect"; whether the debts are "owed or due or asserted to be owed or due another" should therefore be assessed as of the time of collection or attempted collection.

Petitioners seemingly concede that that is the "most natural" interpretation of the statutory text. If Congress had wanted the assessment of whether a debt is "owed or due * * * another" to be made as of some earlier time (for example, as of the time the debt was originated), it would have had to say so. The foregoing interpretation is also consistent with the Court's statutory-interpretation cases, which make clear, in a variety of contexts, that a

statutorily required status should be assessed as of the time of the principal action in the statute at issue.

A number of other textual cues confirm that the foregoing interpretation is the correct one. The FDCPA repeatedly uses the present tense in similar constructions and elsewhere expressly refers to the originator of a debt (which it conspicuously does not do here). And a contrary interpretation, under which the assessment whether debts are "owed or due * * * another" is made as of the time of origination, would render nonsensical the exclusion in Section 1692a(6)(F)(ii), which protects the originator of a debt from liability for its conduct. It naturally follows that, if the assessment whether debts are "owed or due * * * another" is made as of the time of collection or attempted collection, an entity that has purchased a debt and is attempting to collect it for its own account is attempting to collect a debt owed or due itself, not a debt owed or due another.

B. Petitioners offer a convoluted alternative interpretation that, to the best of our knowledge, no court has ever adopted. According to petitioners, a purchased debt triggers the relevant definition of "debt collector" because it is "owed" to the originator, even if it is simultaneously "due" to the purchaser. But petitioners identify nothing in the statute that suggests the terms "owed" and "due" refer to two different points in time, and the Court should reject that decidedly unnatural interpretation.

If Congress had wanted the assessment whether a debt is "owed" (but not whether a debt is "due") to be made as of the earlier time of origination, it would have had to include additional words to that effect. It did not do so, and the words it did use should be given their natural meaning. No significance should be attached to Congress's use of "owed" instead of the synonymous but ar-

chaic "owing." And there is no support for petitioners' alternative contention that a purchased debt is "presently owed" to the originator even after a sale to another person. Where an entity has purchased a debt and then attempts to collect it for its own account, the debt is presently owed only to that entity.

C. Petitioners contend that their interpretation is necessary to avoid anomalies in other provisions that the plain-text interpretation would purportedly create. But each of those provisions works perfectly well under the plain-text interpretation. Consistent with congressional intent, Section 1692a(6)(F)(iii) excludes debt servicers that seek to collect payment on debts that were not in default when the servicers obtained them, and Section 1692a(6)(F)(iv) excludes secured parties that hold debts as collateral but have not acquired full ownership of the debts. Unlike the first two categories of "debt collector" in the FDCPA, the third category, which concerns a creditor collecting its own debts under a different name, admits of no exceptions. And the FDCPA's definition of "creditor" does not aid petitioners, especially because the terms "creditor" and "debt collector" are not mutually exclusive (as petitioners now concede). None of those other provisions casts any doubt on the plain-text interpretation of the relevant definition of "debt collector," which does not reach debt purchasers such as respondent.

D. Petitioners' policy arguments lack merit and cannot overcome the plain text. Congress carefully delineated who was covered by the FDCPA's substantive provisions, and it focused on a subset of actors who had previously been notoriously difficult to regulate: independent debt collectors. Petitioners cite no evidence—because there is none—that Congress intended to reach purchasers of debt whose principal purpose is something other

than debt collection. The text of the statute belies petitioners' contention that the default status of a debt was Congress's driving concern. Most of the examples of abusive practices that petitioners cite involved entities that qualified under the first category of "debt collector" in the FDCPA, because their principal purpose was debt collection. And entities that engage in abusive practices but are not subject to the FDCPA can be regulated under other statutes. In short, petitioners cite no valid policy justification for deviating from the plain text of the statute, and the Court should adopt the concededly "more natural" interpretation.

II. Finally, the Court should reject petitioners' alternative argument that respondent qualifies as a "debt collector" because it regularly attempts to collect debts it *services* for others. That argument is outside the scope of the question presented, which focused only on whether respondent qualifies as a "debt collector" because it regularly attempts to collect debts it *purchased* from others. Petitioners did not raise that alternative argument in the body of their petition for certiorari or in their principal brief below, and it is therefore not properly before this Court.

In any event, that argument lacks merit. The only allegations in petitioners' complaint concern the particular portfolio of loans at issue here; those allegations are nowhere near sufficient to establish that respondent *regularly* attempts to collect debts it services for others. It would be highly inequitable to permit petitioners to proceed on that insufficiently preserved and insufficiently pleaded theory. On the question they did present, petitioners are obviously incorrect. The court of appeals' judgment should therefore be affirmed.

ARGUMENT

I. AN ENTITY DOES NOT QUALIFY AS A 'DEBT COLLECTOR' UNDER THE FDCPA SIMPLY BY PURCHASING DEBTS FROM ANOTHER ENTITY AND THEN ATTEMPTING TO COLLECT THOSE DEBTS FOR ITS OWN ACCOUNT

This case concerns the scope of the second category of "debt collector" under the FDCPA, which reaches any person who "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. 1692a(6). Plainly, an entity that attempts to collect debts owed or due itself—including debts it previously purchased—is not attempting to collect debts owed or due another.

Remarkably, petitioners seemingly concede that the foregoing interpretation is the "most natural" interpretation of the relevant statutory text. Br. 26-27. Even more remarkably, petitioners now offer an alternative interpretation that they did not offer below (or in their petition for certiorari)—an interpretation so novel that petitioners cannot identify a single court to have adopted it. Under that interpretation, a purchased debt triggers the relevant definition of "debt collector" because it is "owed" to the originator, even if it is simultaneously "due" to the purchaser. That profoundly atextual interpretation rests on purported anomalies that would result from the more natural interpretation and on petitioners' policy views as to how Congress should have written the FDCPA. But there is no valid reason here to deviate from the plainer-than-plain meaning of the statutory text.

The court of appeals correctly held that respondent did not qualify as a "debt collector" simply by purchasing the debt portfolio containing petitioners' loans and then attempting to collect those debts for its own account. The judgment of the court of appeals should be affirmed.

A. Under The Plain Text Of The Relevant Definition Of 'Debt Collector,' An Entity Attempting To Collect A Debt It Owns For Its Own Account Is Not Attempting To Collect A Debt 'Owed Or Due Another'

1. The FDCPA does not apply to all persons who take actions to collect debts, but instead applies only to persons who qualify as "debt collectors." The provision of the FDCPA that defines "debt collector," 15 U.S.C. 1692a(6), has two parts. The first part sets out three categories of persons who qualify as "debt collector[s]" under the statute: (1) any person who is engaged in "any business the principal purpose of which is the collection of any debts"; (2) any person who "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another"; and (3) "any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts." 15 U.S.C. 1692a(6). The second part then excludes certain persons and activities from the definition of "debt collector." See 15 U.S.C. 1692a(6)(A)-(F).

The structure of Section 1692a(6) thus confirms that, in assessing whether a person qualifies as a "debt collector," a court must make two determinations. The court must first determine whether the person falls within one of the three categories in the first part of the provision. If so, the court must then determine whether the person or his activities fall within one of the exclusions in the second part of the provision.

2. The only question properly presented here is whether respondent falls within the second category of "debt collector" on account of its attempts to collect debts it owns. Resolution of that question "begins with the language of the statute itself," and because the statute's language is plain, "that is also where the inquiry should end."

Puerto Rico v. *Franklin California Tax-Free Trust*, 136 S. Ct. 1938, 1946 (2016) (internal quotation marks and citation omitted). The answer to that question is no, because an entity attempting to collect a debt it owns for its own account is not attempting to collect a debt "owed or due * * * another."

a. The second category of "debt collector" under the FDCPA reaches any person who "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. 1692a(6). As a matter of basic grammar, the phrase "debts owed or due or asserted to be owed or due another" is the object of the present-tense verbs "collects or attempts to collect." The action of which the "debts" are the object—"collects or attempts to collect"—establishes the point in time at which one should assess whether the debts are "owed or due or asserted to be owed or due another." That assessment is thus made as of the time of collection or attempted collection, not as of some unspecified earlier time.

Put another way, the adjectival phrase "owed or due or asserted to be owed or due another" is a "reduced relative clause"—the equivalent of a dependent clause in the same tense as the sentence in which it appears. In the statutory language "collects or attempts to collect * * * debts owed or due or asserted to be owed or due another," "owed or due or asserted to be owed or due another" is simply a shorthand for the slightly wordier phrase "*that are* owed or due or asserted to be owed or due another."[3]

---

[3] That is consistent with the grammatical principle of the "sequence of tenses," under which, "[w]hen [a] principal clause has a verb in the present[,] * * * [a] subordinate clause has a present-tense verb" as well. Bryan A. Garner, *Garner's Modern English Usage* 896 (4th ed. 2016); see Bryan A. Garner, *Garner's Dictionary of Legal Usage* 881 (3d ed. 2011) (*Garner's Dictionary*).

For that reason, there is no ambiguity concerning the point in time at which one should assess whether a debt is "owed or due * * * another." If Congress had wanted that assessment to be made as of some earlier time (for example, as of the time the debt was originated), it would have had to include additional words to that effect: for example, by referring to debts "*that had been* owed or due * * * another."[4]

Indeed, if Congress had wanted the second category of "debt collector" to reach any person who regularly attempts to collect debt purchased from an originator (or subsequent owner), it could have referred to debts "*that were originated by* * * * another." Such a definition would have plainly and directly excluded pure originators from the reach of the FDCPA. Because Congress "could simply have said" what it meant, it is "most implausible" to conclude that the words it did use were intended to convey that meaning, rather than their plain meaning. *Great-West Life & Annuity Insurance Co.* v. *Knudson*, 534 U.S. 204, 218 (2002).

b. A number of other textual cues confirm that the foregoing interpretation is the correct one.

First, the provision at issue covers not just the collection of debts "owed or due * * * another," but also the collection of debts "*asserted to be* owed or due another." 15 U.S.C. 1692a(6) (emphasis added). Congress expressly used the present tense in the latter phrase, reaching debts "asserted *to be* owed or due another" rather than debts "asserted *to have been* owed or due another." Given that

---

[4] Cf. *Barrett* v. *United States*, 423 U.S. 212, 216 (1976) (noting that, in 18 U.S.C. 922(h), "the proscribed act, 'to receive any firearm,' is in the present tense," but "the interstate commerce reference ['which has been shipped or transported in interstate or foreign commerce'] is in the present perfect tense, denoting an act that has been completed").

the phrase "asserted to be owed or due another" expressly refers to the time of collection or attempted collection, it would make little sense to construe the phrase "owed or due * * * another" to refer to some earlier time. If Congress had intended that meaning, it was required to communicate that intent affirmatively.

Second, the provision defining the statutory term "creditor" covers "any person who offers or extends credit creating a debt *or to whom a debt is owed.*" 15 U.S.C. 1692a(4) (emphasis added). In the emphasized language, Congress again expressly used the present tense—thus referring, as petitioners concede, to the time of collection or attempted collection, not to the earlier time of origination. See Br. 47-48. That understanding is confirmed by the structure of the definition, which makes clear the person "to whom a debt is owed" may be different from the person "who offers or extends credit creating a debt" (*i.e.*, the originator of the debt). 15 U.S.C. 1692a(4). It would be passing strange if the same debt could be simultaneously "owed" to the purchaser for purposes of the definition of "creditor" but "owed" to the originator for purposes of the definition of "debt collector." The definition of "creditor" thus underscores that, if Congress had wanted the definition of "debt collector" to turn on the status of a debt as of some earlier (and different) time, it would have said so.

Third, one of the FDCPA's substantive provisions requires a debt collector to identify "the creditor to whom the debt is owed" and to inform the consumer of his right to request the name and address of "the original creditor, if different from the current creditor." 15 U.S.C. 1692g (a)(2), (5). That language makes clear that the "current" creditor may differ from the "original" creditor (*i.e.*, the originator), and that the "current" creditor is the person

"to whom the debt is owed." Like the definition of "creditor" discussed above, that language is in considerable tension with any interpretation of the definition of "debt collector" that assesses whether a debt was "owed or due * * * another" as of the earlier time of origination. And it further demonstrates that, when Congress intended to refer to the originator of a debt, it did so expressly.[5] Giving the definition of "debt collector" its plain meaning is thus entirely consistent with the remainder of the statutory scheme.

c. A contrary interpretation of the definition of "debt collector"—under which the assessment whether debts are "owed or due * * * another" is made as of the time of origination—would fail for an additional reason. Such an interpretation would render nonsensical Section 1692a (6)(F)(ii), which excludes from the definition of "debt collector" "any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity * * * concerns a debt which was originated by such person." Like the provision at issue, that provision contains the phrase "owed or due * * * another"—and the phrase should be given the same meaning across both provisions. See, *e.g.*, *Federal Communications Commission* v. *AT&T Inc.*, 562 U.S. 397, 408 (2011).

But if the phrase "owed or due * * * another" were read to require an assessment as of the time of origination, the exclusion in Section 1692a(6)(F)(ii) would be a nullity, excluding a person (the originator) that it does not cover in the first place (because the originator was "owed"

---

[5] See also 15 U.S.C. 1602(f) (Truth in Lending Act) (defining a "creditor" as any person who both "regularly extends * * * consumer credit" and "is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness").

the debt at the time of origination). By contrast, if the assessment whether debts are "owed or due * * * another" is made as of the time of collection or attempted collection, the exclusion in Section 1692a(6)(F)(ii) makes perfect sense: it protects an originator from liability for its conduct, even if the debt is now "owed or due * * * another" by virtue of an intervening sale or other transaction.

d. This Court's statutory-interpretation cases support the foregoing interpretation of the relevant definition. Most notably, the Court applied materially identical principles of construction in *Ingalls Shipbuilding, Inc.* v. *Director, Office of Workers' Compensation Programs*, 519 U.S. 248 (1997), a case concerning a provision of the Longshore and Harbor Workers' Compensation Act. That provision states that, "[i]f [a] person entitled to compensation * * * enters into a settlement with a third person" for an amount less than the amount to which the person would be entitled under the statute, the person's employer is liable for compensation only if it gave written approval before the settlement. 33 U.S.C. 933(g)(1).

Interpreting that provision, the Court held that "the 'person entitled to compensation' must be so entitled at the time of settlement." *Ingalls Shipbuilding*, 519 U.S. at 255. The Court reasoned that "[t]he plain language of this [provision] reveal[ed]" that proposition, because the principal action in the clause—the present-tense verb phrase "enters into a settlement"—establishes the point in time at which one should assess whether the person is "entitled to compensation." *Ibid.* (internal quotation marks and emphasis omitted). So too here. While "person entitled to compensation" was the subject of the clause, rather than the object, the applicable principle is the same: the timing of the adjectival phrase (there, "entitled to com-

pensation"; here, "owed or due * * * another") is established by the principal action in the clause in which it appears (there, "enters into a settlement"; here, "collects or attempts to collect").

In other cases, the Court has applied similar principles, assessing a statutorily required status as of the time of the principal action in the statute at issue. For example, in *Dole Food Co.* v. *Patrickson*, 538 U.S. 468 (2003), the Court considered the statute governing removal of actions against foreign states, which provides that "[a]ny civil action brought in a State court against a foreign state * * * may be removed by the foreign state" to federal court. 28 U.S.C. 1441(d). A separate provision defines a "foreign state" as, *inter alia*, an instrumentality "a majority of whose shares or other ownership interest is owned by a foreign state." 28 U.S.C. 1603(b)(2). The Court held that whether an instrumentality is a "foreign state" should be determined as of the time of the filing of the action, rather than as of the earlier time of the conduct giving rise to the action. See 538 U.S. at 478. The Court relied on the fact that the definitional provision "is expressed in the present tense," as well as the traditional principle that a court's jurisdiction "depends upon the state of things at the time of the action brought." *Ibid.* (internal quotation marks and citation omitted).

Similarly, in *Price Waterhouse* v. *Hopkins*, 490 U.S. 228 (1989), the Court considered the provision of Title VII imposing liability on an employer that "fail[s] or refuse[s] to hire," "discharge[s]," or "otherwise * * * discriminate[s] against any individual * * * because of such individual's * * * sex." 42 U.S.C. 2000e-2(a). The plurality concluded that the "critical inquiry" under the provision was "whether gender was a factor in the employment decision *at the moment it was made*." *Price Waterhouse*, 490 U.S. at 241. The plurality cited "[t]he present, active

tense of the operative verbs," which "turns our attention to the actual moment of the event in question, the adverse employment decision." *Id.* at 240-241; see *id.* at 283 (Kennedy, J., dissenting) (agreeing with the foregoing analysis, but disagreeing that the use of the present tense excluded the possibility of but-for causation).

3. Once it is established that the assessment whether debts are "owed or due * * * another" is made as of the time of collection or attempted collection, the only remaining question is whether debts are "owed or due" an entity that has purchased the debts and is attempting to collect them for its own account. They obviously are.

The term "owe" means "to be under obligation to pay or render," or "to be indebted to or for." *Merriam-Webster Dictionary* 355 (2005); see, *e.g.*, *American Heritage Dictionary of the English Language* 1257 (4th ed. 2000) (*American Heritage Dictionary*). And the term "due" means "owed or owing as a debt" or "having reached the date at which payment is required: payable." *Merriam-Webster's Collegiate Dictionary* 357-358 (10th ed. 1993); see, *e.g.*, *American Heritage Dictionary* 553.[6]

A debtor is unambiguously "indebted to" and "under [an] obligation to pay" an entity that has purchased the debt. When the debt was originated, the debtor was indebted to, and under an obligation to pay, the originator. But once the originator sold the debt to another entity, the originator could no longer claim any right to payment. At that point, the debtor becomes indebted to, and under an obligation to pay, the current owner of the debt, not the

---

[6] Although often used interchangeably, the terms "owed" and "due" may convey slightly different meanings. A debt that is "owed" (or "owing") may not yet be "due": for example, "a note payable thirty days after date is owing immediately after it is delivered to the payee, but it is not *due* until the thirty days have elapsed." *Garner's Dictionary* 300 (internal quotation marks and citation omitted).

originator. The current owner of the debt is thus the person to whom the debt is owed. Under the second category of "debt collector," therefore, an entity that has purchased a debt and then attempts to collect it for its own account is attempting to collect a debt owed or due itself, not a debt "owed or due * * * another."

* * * * *

The Court can stop reading here. As the Court has often said, "when [a] statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Sebelius* v. *Cloer*, 133 S. Ct. 1886, 1896 (2013) (internal quotation marks and citation omitted). As a matter of plain language, the second category of "debt collector" under the FDCPA reaches only persons who collect or attempt to collect debts that are owed or due someone else *at the time of collection or attempted collection.* Petitioners seemingly concede that such an interpretation of the statutory text is the "most natural" one, Br. 26-27, and they conspicuously do not contend that such an interpretation is absurd. As we will now explain, petitioners' efforts to concoct and then justify an alternative interpretation are unavailing.

B. Petitioners' Alternative Interpretation Of The Relevant Definition Of 'Debt Collector' Is Contrary To The Plain Text

Petitioners offer a convoluted alternative interpretation of the relevant statutory language that, to the best of our knowledge, no court has ever adopted. According to petitioners, a purchased debt triggers the second category of "debt collector" because it is "owed" to the originator, even if it is simultaneously "due" to the purchaser. See Br. 27-29. Under petitioners' interpretation, the parallel adjectives "owed" and "due" refer to two different

points in time: "due" requires an assessment as of the time of collection or attempted collection, but "owed" requires an assessment as of the earlier time of origination. The Court should reject that head-spinning and decidedly unnatural interpretation.

1. To start with the obvious, petitioners identify nothing in the statute that suggests the terms "owed" and "due" refer to two different points in time. And none of the court of appeals decisions petitioners cite has adopted such an interpretation. See, *e.g.*, *Miller* v. *BAC Home Loans Servicing, L.P.*, 726 F.3d 717, 722-723 & n.5 (5th Cir. 2013); *Bridge* v. *Ocwen Federal Bank, FSB*, 681 F.3d 355, 358-360 (6th Cir. 2012); *Ruth* v. *Triumph Partnerships*, 577 F.3d 790, 796-797 (7th Cir. 2009); *Federal Trade Commission* v. *Check Investors, Inc.*, 502 F.3d 159, 171-174 (3d Cir. 2007), cert. denied, 555 U.S. 1011 (2008); *Schlosser* v. *Fairbanks Capital Corp.*, 323 F.3d 534, 536-539 (7th Cir. 2003); *Perry* v. *Stewart Title Co.*, 756 F.2d 1197, 1208 (5th Cir. 1985).

Petitioners have seemingly devised that interpretation in an effort to avoid some of the problems that would result from an interpretation that assesses whether debt is *both* "owed" *and* "due" as of the time of origination. See pp. 20-21, *supra*.[7] Yet petitioners' interpretation suffers from the same fundamental flaw: it cannot be reconciled with the language and structure of the relevant definition, which makes clear that the assessment whether a debt is

---

[7] Indeed, petitioners' interpretation would reach even further, because petitioners would sweep even an originator into the second category of "debt collector" where it regularly attempts to collect debts it had originated but then sold to another. See Br. 33 n.36. Petitioners take that position in an apparent effort to avoid rendering the exclusion in Section 1692a(6)(F)(ii) entirely superfluous. See pp. 20-21, *supra*.

both "owed" and "due" is made as of the time of collection or attempted collection. See pp. 17-20, *supra*.

Again, if Congress had wanted the assessment whether a debt is "owed" (but not whether a debt is "due") to be made as of the earlier time of origination, it would have had to include additional words to that effect: for example, by using the phrase "collects or attempts to collect * * * debts *that had been* owed or *are* due * * * another," or "collects or attempts to collect * * * debts *originally* owed or *presently* due * * * another" (and presumably making similar changes to the parallel phrase "asserted to be owed or due another"). But Congress did not use those words. And the words it did use should be afforded their natural meaning, with "collects or attempts to collect" establishing the point in time at which one should assess whether the debts are "owed or due * * * another."

The sole textual point that petitioners make in support of their interpretation is that Congress used the past participle "owed," rather than the present participle "owing." Br. 28. But that is a distinction without a difference—and, in attempting to draw that distinction, petitioners misapprehend basic principles of grammar. While "owed" is technically a "past" participle, that does not mean it necessarily refers to a previous time. See, *e.g.*, Pam Peters, *Cambridge Guide to English Usage* 409 (2004) (*Cambridge Guide*); Sylvia Chalker & Edmund Weiner, *Oxford Dictionary of English Grammar* 286-287 (1994). As discussed above, "debts owed" is here merely a shorthand for "debts that are owed," see pp. 17-18, and the combination of a past participle and a present-tense form of "to be" constitutes the present tense of the passive voice, see Bryan A. Garner, *Garner's Modern English Usage* 676 (4th ed. 2016) (*Garner's Usage*); *Cambridge Guide* 411.

Moreover, there was good reason for Congress to use "owed" rather than "owing." "Owing" conveys not just the present tense, but also the active voice; one could just as easily refer to a person "owing" an amount (in a transitive sense) as one could refer to an amount "owing" to a creditor (in an intransitive sense). But "owed" equally conveys the latter meaning—and unambiguously conveys *only* that meaning. As one leading usage guide explains, "[a]lthough *owing* in the sense of *owed* is an old and established usage * * *, the more logical course is simply to write *owed* where one means *owed*," because "[t]he active participle [*owing*] may sometimes cause miscues." *Garner's Usage* 666. As the guide further notes, at the time of the FDCPA's enactment, "owed" had already become the more commonly used term for that purpose: "beginning about 1970, the collocation *amount owed to* overtook *amount owing to* in frequency of use in print sources." *Ibid.* There is thus no significance to Congress's use of the more natural and contemporary "owed" rather than the more stilted and archaic "owing"; the term "owed," like the term "due," requires an assessment as of the time of collection or attempted collection.

2. Petitioners' hypotheticals do not help their cause. Petitioners first hypothesize an entity that purchases debt from Wells Fargo and then states to its customer: "[W]e are collecting on a debt you owed Wells Fargo, which we purchased last month. The debt owed Wells Fargo is now due to us." Br. 27. But that hypothetical simply uses verb tenses imprecisely: the second sentence should read, "The debt *that had been* owed Wells Fargo is now due to us." Petitioners try to make up for that imprecision by packing their hypothetical with contrary contextual cues. Thus, they use the past-tense "owed" in the first sentence (in contrast to the present-tense "are collecting") and note that the debt had been "purchased last

month," and they add in the second sentence that the debt "is now due to us." *Ibid.* But there are no corresponding cues in the relevant definition of "debt collector" to suggest that "owed" requires an assessment as of the time of origination, much less that "owed" and "due" refer to two different points in time. The hypothetical illustrates just how far petitioners' interpretation strays from the language that Congress actually used.

In their next hypothetical, petitioners posit a rule that requires applicants for federal jobs to list "all debts owed or due a foreign government." Br. 28. Unlike the relevant definition of "debt collector," however, that hypothetical does not provide the action that is the subject of the clause (and that would thus establish the point in time at which one should assess whether the debts are "owed or due a foreign government"). Suppose the hypothetical rule stated: "You are ineligible for a federal job if you are paying off a debt owed or due a foreign government." It would then be clear that the assessment whether a debt is "owed or due a foreign government" should be made as of the present time, not some unspecified earlier time. Here, the verbs "collects or attempts to collect" supply the requisite reference point: whether a debt is "owed or due" should be assessed as of the time of collection or attempted collection.

In their final hypothetical, petitioners cite the example of a "person who regularly collects artwork owned by celebrities." Br. 28-29. But that hypothetical also uses verb tenses imprecisely: one would instead speak of a "person who regularly collects artwork *that had previously been* owned by celebrities," unless one were speaking euphemistically about an art thief. And even if petitioners' hypothetical were susceptible of an alternative interpretation, it would not support their interpretation of the pro-

vision at issue, which requires reading the parallel adjectives "owed" and "due" to refer to two different points in time.

3. Unable to support the proposition that the term "owed" requires an assessment as of the time of origination, petitioners alternatively contend that purchased debts are "*presently* owed" to the originator, even after a sale to another person. Br. 28. That is plainly incorrect. As a matter both of the law and of common sense, the sale of a debt extinguishes the seller's right to payment from the debtor and transfers that right to the purchaser. See Restatement (Second) of Contracts § 317(1) (1981). Even petitioners do not appear to believe that a debt remains owed to the originator after sale; they assert only that a person might possess such an incorrect "intuition." See Br. 28.

On this point, petitioners cite the Court's decision in *Sprint Communications Co., L.P.* v. *APCC Services, Inc.*, 554 U.S. 269 (2008). That decision, however, involved a partial assignment and is therefore inapposite. *Sprint Communications* concerned billing and collection firms called "aggregators," which were assigned the right to pursue claims against long-distance carriers on behalf of payphone operators (and promised to remit any compensation recovered to the operators). See *id.* at 271-272. The specific question presented in *Sprint Communications* was whether such an aggregator had a sufficient interest to give rise to standing in federal court. See *id.* at 271.

Analyzing the history of such arrangements, the Court noted it had long been recognized that an assignee could possess equitable title to a chose in action while the assignor retained legal title; in other words, title to the claim was not transferred in full to the assignee. See *Sprint*

Communications, 554 U.S. at 276. As the Court explained, the aggregators were "assignees for collection only, *i.e.*, assignees who brought suit to collect money owed to their assignors" and promised to turn the money over after it was collected. *Id.* at 280. The aggregators at issue in *Sprint Communications* may thus have been analogous to debt *servicers*, see p. 32, *infra*, but they were nothing like debt *purchasers*, which acquire full title to debts upon sale and thus leave sellers with no residual rights to any payments the purchasers receive.

Where an entity has purchased a debt and then attempts to collect it for its own account, the debt is presently owed only to that entity. The relevant statutory language does not permit petitioners' alternative interpretation, and the Court should reject it.

C. The Purported Anomalies Petitioners Identify With The Plain-Text Interpretation Are Illusory

Petitioners contend that their jerry-rigged interpretation of the relevant definition of "debt collector" is necessary to avoid anomalies that the plain-text interpretation would purportedly create in other provisions. See Br. 29-33, 44-50. But each of those provisions works perfectly well under an interpretation that assesses whether a debt is "owed or due * * * another" as of the time of collection or attempted collection. There is therefore no valid justification for departing from the plain text here.

1. Petitioners primarily rely on Section 1692a (6)(F)(iii), which excludes from the definition of "debt collector" "any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity * * * concerns a debt which was not in default at the time it was obtained by such person." See Br. 29-33. Petitioners argue that, if whether a debt is "owed or due * * * another" is assessed as of

the time of collection or attempted collection, it would render the exclusion nonsensical, because a person who has "obtained" a debt would not be covered in the first place (since the debt would no longer be "owed or due * * * another" after it has been obtained). See Br. 31.

That argument lacks merit because it rests on an incorrect understanding of the meaning of "obtained." Petitioners all but equate "obtaining" a debt with "owning" it outright (after obtaining a complete assignment). See Br. 30-31. But purchasing a debt is "not the only way" to "obtain" it. *Carter* v. *AMC, LLC*, 645 F.3d 840, 844 (7th Cir. 2011). In ordinary English, "obtain" can signify mere possession short of full ownership. See *American Heritage Dictionary* 1214 (4th ed. 2000) (defining "obtain" as "[t]o succeed in gaining possession of as the result of planning or endeavor; acquire"); 10 *Oxford English Dictionary* 669 (2d ed. 1989) (defining "obtain" as "[t]o come into the possession or enjoyment of (something) by one's own effort, or by request").

This Court, too, has recognized that distinction. In *Kirtsaeng* v. *John Wiley & Sons, Inc.*, 133 S. Ct. 1351 (2013), the Court contrasted an earlier version of the Copyright Act that reached "the transfer of any copy of a copyrighted work the possession of which has been *lawfully obtained*" with a later version that reached only the transfer by "the *owner* of a particular copy." *Id.* at 1360 (internal quotation marks, citation, and some emphases omitted). And in *Heintz* v. *Jenkins*, 514 U.S. 291 (1995), the Court used "obtain" in a similarly broad sense in discussing the scope of the FDCPA, noting that a lawyer "regularly tries to *obtain* payment of consumer debts through legal proceedings" (even though the lawyer does not own the underlying payments). *Id.* at 294 (emphasis added).

In Section 1692a(6)(F)(iii), Congress used "obtained" rather than "transferred" (or some other word denoting ownership), and it had good reason to do so. Congress included Section 1692a(6)(F)(iii) for the specific purpose of excluding "mortgage service companies and others who service outstanding debts for others, so long as the debts are not in default when taken for servicing." S. Rep. No. 382, 95th Cong., 1st Sess. 3-4 (1977). As petitioners concede, a debt servicer can acquire the right to collect payments and provide other services without acquiring ownership of the underlying debt. See Br. 8 n.9. In that circumstance, the servicer can be said to have "obtained" the debt, even though the debt remains "owed or due" the owner that hired the servicer. Lower courts have consistently interpreted Section 1692a(6)(F)(iii) in precisely that fashion. See, *e.g.*, *Carter*, 645 F.3d at 843-844; *Eke* v. *FirstBank Florida*, 779 F. Supp. 2d 1354, 1358-1359 (S.D. Fla. 2011); *Franceschi* v. *Mautner-Glick Corp.*, 22 F. Supp. 2d 250, 253-254 (S.D.N.Y. 1998). Under the plain-text interpretation of "debt collector," therefore, not only does Section 1692a(6)(F)(iii) have meaning, it has its intended meaning.

2. Petitioners make a similar argument regarding Section 1692a(6)(F)(iv), which excludes from the definition of "debt collector" "any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity * * * concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor." See Br. 29-33. Petitioners argue that such an exclusion would also be nonsensical, because a secured party "'obtains' debts in the same sense as a debt purchaser." Br. 32.

Again, petitioners are incorrect. Congress included Section 1692a(6)(F)(iv) for the specific purpose of excluding "the collection of debts owed to a creditor when the collector is holding the receivable account *as collateral* for commercial credit extended to the creditor." S. Rep. No. 382, *supra*, at 4 (emphasis added). In other words, the exclusion addresses the circumstance in which a creditor uses debt it owns as collateral for a loan from a commercial lender. Much as with a debt servicer, the lender that is the secured party in that transaction "obtains" the debt by holding it as collateral without acquiring full ownership. Under the natural interpretation of "debt collector," therefore, Section 1692a(6)(F)(iv) also has its intended meaning.

3. Petitioners fare no better in attempting to manufacture a problem out of the third category of "debt collector," which provides as follows: "Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term [debt collector] includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts." 15 U.S.C. 1692a(6). Under the plain-text interpretation of "owed or due * * * another," petitioners contend, the "notwithstanding" clause would do no work, because clause (F) applies only to "any person collecting or attempting to collect any debt owed or due * * * another," whereas the third category of the definition applies only to a "creditor * * * *collecting his own* debts." Br. 49-50.

To begin with, "superordinating language," such as the "notwithstanding" clause here, "merely shows which provision prevails in the event of a clash—but does not necessarily denote a clash of provisions." Antonin Scalia & Bryan A. Garner, *Reading Law* 126-127 (2012). As a

result, it would not be problematic if there are no identifiable examples in which the third category of the definition applies but an exclusion provided by clause (F) also applies (thus triggering the "notwithstanding" clause). Congress may have included the "notwithstanding" clause merely to clarify that the third category of "debt collector," unlike the first two, admits of no exceptions.

In any event, it is not hard to posit such an example. As petitioners conspicuously fail to acknowledge, the exclusions provided by clause (F) apply to "any person collecting or attempting to collect" not just "any debt owed or due * * * another," but also "any debt * * * *asserted to be* owed or due another." 15 U.S.C. 1692a(6)(F) (emphasis added). The third category of "debt collector" reaches precisely the circumstance in which a creditor misleadingly asserts that a third party is involved in the transaction. See 15 U.S.C. 1692a(6). The "notwithstanding" clause thus ensures that such a devious creditor remains a "debt collector" even if it could argue that it falls within one of the clause (F) exclusions by dint of its misrepresentation.

4. Petitioners also invoke the FDCPA's definition of "creditor," though it is not entirely clear why. See Br. 46-49. Petitioners argued below that the definition of "creditor" affirmatively supported their interpretation because the terms "creditor" and "debt collector" were mutually exclusive. See Pet. C.A. Br. 12; Pet. C.A. Reply Br. 27. But petitioners now abandon that argument, conceding that the terms are not exclusive. See Br. 47. That concession is prudent, because the definition of "debt collector" does not exclude "creditors" (and in fact makes clear that a "creditor" can qualify as a "debt collector" in certain circumstances). See 15 U.S.C. 1692a(6).

In any event, the "creditor" definition does not aid petitioners here. That provision defines a "creditor" as including "any person who offers or extends credit creating a debt or to whom a debt is owed," but excluding "any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another." 15 U.S.C. 1692a(4).

The latter clause is not written as an exception from the category created by the first clause. But even if it were, it would still carve out certain persons who would otherwise be covered by the first part of the definition under a plain-text interpretation of the present-tense phrase "a person * * * to whom a debt is owed." For example, it would exclude persons to whom a debt is assigned or transferred essentially as a sham: that is, "solely for the purpose of facilitating collection" for the previous owner. 15 U.S.C. 1692a(4). And it would also seemingly exclude persons who acquire full ownership of a debt but are obligated under the terms of the transaction to remit collected payments back to the assignor or transferor. In both of those circumstances, the assignee or transferee is receiving the debt "solely for the purpose of facilitating collection * * * for another."[8]

* * * * *

Ultimately, petitioners' tactic in raising each of these supposed anomalies is clear: to distract from the plain language of the definition at issue here and attempt to use exclusions from that definition to drive its meaning. See

---

[8] Petitioners' alternative interpretation of the exclusion defies all sense. Petitioners contend that, where an assignee or transferee is collecting debt solely for its own account, it nevertheless falls within the exclusion because it stands in the shoes of the originator and is therefore "facilitating collection of such debt for another" (*i.e.*, itself!). Br. 49. In a brief full of odd interpretations, that one takes the cake.

Br. 50 (relying on the "combined gist" of the exclusions to support petitioners' interpretation). In so doing, however, petitioners entirely invert the process of statutory interpretation. This Court has consistently refused to reason backward from exceptions in that fashion. See, *e.g.*, *Dan's City Used Cars, Inc.* v. *Pelkey*, 133 S. Ct. 1769, 1780 (2013). Congress had no reason to hide the meaning of "debt collector" within the statute's various exclusions in the equivalent of a statutory egg hunt. The relevant definition of "debt collector" in the FDCPA is unambiguous, and debt purchasers such as respondent are outside the statute's ambit.

D. Petitioners' Policy Arguments Lack Merit And Cannot Overcome The Plain Text

Tellingly, petitioners devote far more attention to policy arguments than they do to arguments about the relevant statutory provision. See Br. 33-44, 50-53. And in those sections of their brief, petitioners offer extended musings about how they believe the statute should operate and what purposes it should serve, largely without support. See *ibid.* But the language of the relevant provision is clear, and this Court "must presume that [the] legislature says in a statute what it means and means in a statute what it says there." *Dodd* v. *United States*, 545 U.S. 353, 357 (2005) (internal quotation marks and citation omitted). In any event, petitioners' policy arguments lack merit.

1. As borne out in the statutory text, Congress intended in the FDCPA to proscribe certain debt-collection practices only when they were committed by a specified group of "debt collectors." Congress could have taken a different approach and applied the FDCPA's substantive provisions to any person collecting a consumer debt—as some States have done in their analogous statutes. See,

e.g., W. Va. Code Ann. § 46A-2-122(c), (d) (defining "debt collector" as "any person or organization engaging directly or indirectly" in "any action, conduct, or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due by a consumer"); N.H. Rev. Stat. Ann. § 358-C:1 (defining "debt collector" to include "[a]ny person who by any direct or indirect action, conduct or practice enforces or attempts to enforce an obligation that is owed or due, or alleged to be owed or due, by a consumer as a result of a consumer credit transaction").[9]

Instead, Congress carefully delineated who was covered by the FDCPA's substantive provisions. And as discussed above, see pp. 3-4, Congress focused on a subset of actors who had been notoriously difficult to regulate: independent debt collectors. Congress explained that independent debt collectors were the "prime source of egregious collection practices." S. Rep. No. 382, *supra*, at 2; see H.R. Rep. No. 131, 95th Cong., 1st Sess. 7 (1977). Those debt collectors were generally small and short-lived. See S. Rep. No. 382, *supra*, at 2; H.R. Rep. No. 131, *supra*, at 7. And they could "easily go out of business after suit" by federal regulators, with the result that suits against them (unlike suits against larger and more established creditors) "d[id] not change industrywide practices." H.R. Rep. No. 131, *supra*, at 7.

As a result, Congress stated that independent debt collectors were the "primary persons intended to be covered" by the statute, S. Rep. No. 382, *supra*, at 3, and it drafted the definition of "debt collector" accordingly.

---

[9] As the amicus States admit, other States are free to enact or amend their own laws to reach more actors and more conduct than the FDCPA if they believe the reach of federal law is insufficient. See States Br. 10-11. The mere fact that some States have chosen not to do so is hardly a reason to distort the meaning of federal law.

That definition primarily covers entities whose "principal purpose" is "the collection of any debts." 15 U.S.C. 1692a(6). To ensure that debt collectors do not escape the reach of the statute simply by having a different "principal purpose," however, the definition also covers entities that "regularly" collect "debts owed or due or asserted to be owed or due another." *Ibid.* Congress expressed the belief that entities "such as banks, retailers, credit unions or finance companies" would not fall within one of those two categories H.R. Rep. No. 131, *supra*, at 4. Respondent—a consumer-finance company that is indirectly majority-owned by one of the world's largest banks—is precisely such an entity.

Indeed, as such a diversified financial institution, respondent is more like a creditor that has an interest in a continuing business relationship with a debtor than a debt collector that lacks such an interest. Respondent's principal activity is not debt collection, but rather lending; it is one of the Nation's largest automotive lenders, issuing and servicing thousands of car loans every year. See pp. 6-7, *supra*. As a result, respondent has a significant interest in maintaining good relationships with its customers so that they will consider using respondent for subsequent car loans, recommending respondent to others, and using or recommending Santander for other financial needs. In that way, financial institutions such as respondent more closely resemble "creditors," which Congress recognized "generally are restrained by the desire to protect their good will when collecting past due accounts," than "independent collectors," which "are likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them." S. Rep. No. 382, *supra*, at 2.

Petitioners muse at length about whether debt purchasers are actually analogous to debt servicers. See Br.

34-37. But petitioners cite no evidence—because there is none—that Congress intended to reach debt purchasers. Indeed, petitioners admit that the industry for buying defaulted debt did not emerge until after the statute's enactment. See Br. 8. And to the extent that petitioners speculate (again without any support) that debt purchasers have similar incentives to debt servicers, that speculation is ultimately unavailing. Congress included a definition of "debt collector" in the FDCPA, and that definition articulates exactly what characteristics an entity must have to be subject to the statute. The language of the statute is the most accurate reflection of Congress's intent at the time it enacted the FDCPA; if petitioners believe the statute should be extended to a new category of actors, they should direct those arguments to Congress in the first instance.

In any event, it is easy to see why Congress would not have extended the FDCPA to cover entities such as respondent. As petitioners note, once an entity is classified as a "debt collector" under the FDCPA, it becomes subject to a long list of substantive requirements. See Br. 4-5. The expansive interpretation of "debt collector" proposed by petitioners would expose respondent's entire business—and the business of myriad other financial institutions in respondent's position—to the burgeoning cottage industry of FDCPA litigation. That would create incentives for entities such as respondent to avoid purchasing debt (or, at a minimum, to avoid purchasing defaulted debt, even where it is part of a larger debt portfolio)—which could have negative effects on secondary markets and leave debt collectors as the only entities willing to engage in such transactions. That perverse result would surely be contrary to Congress's intent in enacting the FDCPA.

2. Petitioners next contend that, as a policy matter, whether a debt is in default should be talismanic, because, when it comes to defaulted debt, "the incentives for aggressive collection practices are particularly high." Br. 36-37. Again, however, the text of the statute belies the proposition that the default status of a debt was Congress's driving concern. The word "default" appears nowhere in the affirmative definition of "debt collector," but instead appears in only one of the many exclusions from that definition (the exclusion for debt servicers). 15 U.S.C. 1692a(6)(F)(iii). In fact, the word "default" appears in only one other place in the entire statute. See 15 U.S.C. 1692a(4). And the statute does not define "default," which would be highly peculiar if Congress had intended default status to be the predominant factor for determining whether an entity qualifies as a "debt collector."[10] To the contrary, the predominant factors under the statute are, first, whether an entity has the "principal purpose" of engaging in debt collection, and second, whether the entity regularly collects or attempts to collect debts for others.

3. Petitioners also contend that, under the plain-text interpretation, entities could "change their business models" in order to avoid being subject to the FDCPA—whether by diversifying their business practices so that their "principal purpose" is no longer debt collection, or by acquiring full ownership of debts so that they are collecting the debts for their own accounts. Br. 40-41. But even assuming it is likely that entities would be willing to

---

[10] Petitioners misleadingly assert that a debt is "generally understood" to be in default within the meaning of the FDCPA "only after a period of persistent nonpayment." Br. 45 n.47. In fact, whether a debt is in default is usually determined by the terms of the applicable agreement. See *Alibrandi* v. *Financial Outsourcing Services, Inc.*, 333 F.3d 82, 87 n.5 (2d Cir. 2003) (per curiam).

make those changes, that possibility is inherent in the system that Congress created, which does not regulate every entity when it engages in debt collection but instead looks to an entity's overall business practices to determine whether it is subject to regulation. And it bears noting that an entity that is not subject to the FDCPA would hardly go unregulated if it engages in abusive practices; it would remain subject to more encompassing statutes such as the Consumer Financial Protection Act of 2010 (Dodd-Frank Act), the Federal Trade Commission Act, the Fair Credit Reporting Act, and the Truth in Lending Act (which specifically applies only to originators of loans).[11]

4. Petitioners conjure up a sparse parade of horribles, citing less than a handful of examples of government enforcement actions against debt purchasers accused of various prohibited practices in collecting debts. See Br.

---

[11] See, *e.g.*, 12 U.S.C. 5481(6)(A), 5531(a), 5536(a)(1) (Dodd-Frank Act) (reaching "any person * * * offering or providing a consumer financial product or service" that commits "any unfair, deceptive, or abusive act or practice"); 15 U.S.C. 45(a)(1), (2) (FTC Act) (covering "persons, partnerships, or corporations" that engage in "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce"); 15 U.S.C. 1681s-2 (Fair Credit Reporting Act) (prohibiting any person from "furnish[ing] any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe the information is inaccurate"); 15 U.S.C. 1602(g), 1631 (Truth in Lending Act) (covering any person who both "regularly extends * * * consumer credit" and "is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness," and requiring such creditors to disclose certain information when entering into consumer credit transactions).

37-39.[12] Notably, however, all of the entities at issue appear to qualify under the first category of "debt collector" in the FDCPA, because their "principal purpose" is "the collection of any debts"; indeed, most of those entities appear to have conceded that they qualified as "debt collectors." See Consent Decree, *United States* v. *Capital Acquisitions & Management Corp.*, Civ. No. 04-50147 (N.D. Ill. Mar. 24, 2004) <tinyurl.com/capitaldecree>; Consent Order, *In re Encore Capital Group, Inc.*, No. 2015-22 (C.F.P.B. Sept. 9, 2015) <tinyurl.com/encoredecree>; Consent Order, *In re Portfolio Recovery Associates, LLC*, No. 2015-23 (C.F.P.B. Sept. 9, 2015) <tinyurl.com/portfoliodecree>.

Petitioners seemingly acknowledge that examples of similar misconduct by entities whose principal purpose is *not* debt collection are few and far between. See Br. 50-51. That is not surprising. As petitioners' own amici recognize, to the extent a secondary market has developed for buying and selling portfolios of defaulted debt, that market is "dominated by" entities whose principal purpose is debt collection, Public Counsel Br. 11; as a result, "[t]he vast segment of the debt industry that exists solely to purchase and collect debt * * * should remain untouched" by a ruling in respondent's favor, NCLC Br. 33 n.10. There is thus no valid justification to rewrite the second category of "debt collector" to reach those few debt

---

[12] Significantly, the government has not filed a brief in support of petitioners, despite the heavy reliance by petitioners and their amici on prior government statements. See, *e.g.*, Pet. Br. 12-13; Yale Law School Br. 21-36. To the extent those statements seemingly embraced a more expansive interpretation of the relevant definition of "debt collector," those statements were made outside the rulemaking context, and such an interpretation is inconsistent with the plain text of the statute. Those statements would thus not warrant deference.

purchasers that do not qualify under the first category, but engage in abusive practices that could be regulated under other statutes.[13]

Indeed, respondent's acquisition of the loan portfolio at issue here bears no resemblance to the transactions taking place on the secondary market for defaulted debt. On that market, buyers acquire debt that is generally so far past delinquent that it is unlikely to be collected, and they acquire the debt at a deep discount for precisely that reason. See FTC, *Structure and Practices* ii, 13. This transaction, by contrast, was an arm's-length one between two large diversified financial institutions, each primarily focused on their own consumer-lending operations. Respondent acquired CitiFinancial Auto's debt portfolio totaling $3.55 billion, which included both non-defaulted and defaulted debt, and it incorporated CitiFinancial's auto-loan business into its own existing auto-loan business. See Resp. C.A. Br. 56. And the complaint contains no specific allegation that respondent acquired the portfolio at issue for pennies on the dollar. There is no reason to think that a financial institution such as respondent was the type of actor Congress sought to regulate when it enacted the FDCPA—and good reason to think otherwise. See pp. 36-39, *supra*.

5. Finally, petitioners contend that an interpretation that assesses whether a debt is "owed or due * * * another" as of the time of collection or attempted collection would "exempt only a random slice of companies that regularly collect purchased defaulted debt." Br. 42-44. But that appears to be a quibble with the statute as written:

---

[13] Petitioners correctly concede that, because respondent is a consumer-finance company specializing in automotive lending, its "principal purpose" is not debt collection. See Br. 16 n.31; Pet. App. 28a.

specifically, with the undisputed proposition that "a company's status as a 'debt collector' under the main definitions turns on its general business model[,] * * * not the particulars of any given debt." Br. 42-43. Unlike the affirmative definitions of "debt collector," the exclusions provided by clause (F) are triggered only where an entity is "collecting or attempting to collect" a *particular* "debt owed or due * * * another." To the extent that structure creates an "anomalous gap," it has nothing to do with the question presented here. Br. 42. It is simply a consequence of the different way in which Congress drafted the affirmative definitions (categorically for certain persons) and the exclusions (specifically for certain activities).

* * * * *

In short, there is no valid policy justification for deviating from the plain text of the statute. The court of appeals correctly held that, because respondent owned the debts at issue, it was not attempting to collect debts "owed or due * * * another" and thus could not qualify under the second category of "debt collector" in the FDCPA. The judgment of the court of appeals should therefore be affirmed.[14]

---

[14] Even if petitioners were correct that whether a debt is "owed or due * * * another" should be assessed as of the time of origination, it would not follow that respondent necessarily qualifies as a "debt collector." That is because petitioners would still have to show that respondent "*regularly* * * * attempts to collect" such debts. 15 U.S.C. 1692a(6) (emphasis added). Tracking a generic allegation in their complaint, see J.A. 16, petitioners' original question presented asserted that respondent "*is in the business* of purchasing defaulted debt for pennies on the dollar then attempting to collect on that debt from the defaulting consumer." Pet. i (emphasis added). But that assertion was utterly unfounded: the complaint contains no allega-

II. THE COURT SHOULD REJECT PETITIONERS' ALTERNATIVE ARGUMENT THAT RESPONDENT QUALIFIES AS A 'DEBT COLLECTOR' BECAUSE IT REGULARLY SERVICES DEBTS FOR OTHERS

In an effort to salvage something from this case, petitioners contend in the alternative that, even if respondent does not qualify as a "debt collector" because it attempts to collect debts it *purchased* from others, it still qualifies as a "debt collector" because it regularly attempts to collect debts it *services* for others. See Br. 53-56. That contention is both forfeited and meritless.

A. As a preliminary matter, petitioners' alternative argument for reversal is not within the scope of the question presented in their petition for certiorari: namely, "[w]hether a company that regularly attempts to collect debts *it purchased after the debts had fallen into default* is a 'debt collector' subject to the [FDCPA]." Pet. i (emphasis added). That question could not be more discrete from the question whether a company that regularly attempts to collect debts *it services for others* qualifies as a "debt collector"; there is no sense in which the latter question is either fairly included within, or predicate to the resolution of, the former question. Nor did petitioners make any reference to their alternative argument in the body of their petition for certiorari or in their principal brief before the court of appeals. By any measure, therefore, that argument is not properly before this Court.

B. In any event, petitioners' alternative argument fails on the merits. Petitioners contend that respondent

---

tions concerning respondent's business practices beyond the particular portfolio of loans at issue here, and, as noted above, it contains no specific allegation that the respondent acquired the portfolio at issue for pennies on the dollar either. See J.A. 13-36; p. 43, *supra*; pp. 47-48, *infra*. Tellingly, petitioners delete that assertion from the question presented in their merits brief. See Br. i.

qualifies as a "debt collector" because it "regularly collects debts owed others as part of its third-party debt servicing practice." Br. 53-54. But the allegations in petitioners' complaint are nowhere near sufficient to establish that proposition.

1. As discussed above, an entity falls within the second category of "debt collector" if it "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. 1692a(6). This Court has not interpreted the meaning of the term "regularly" in that provision. Consistent with its ordinary meaning, however, lower courts have held that whether an entity "regularly" collects or attempts to collect debts owed or due another turns on whether it does so "as a matter of course" or "as a substantial * * * part" of its business, taking into account the frequency and proportion of such activity in relation to the entity's business more generally. *Schroyer* v. *Frankel*, 197 F.3d 1170, 1176 (6th Cir. 1999); see, *e.g.*, *Absolute Power System, Inc.* v. *Cummins, Inc.*, Civ. No. 15-8539, 2016 WL 6897782, at *8 (D.N.J. Nov. 23, 2016); *Mertes* v. *Devitt*, 734 F. Supp. 872, 874 (W.D. Wis. 1990). Isolated or occasional collection activity involving debts owed or due another is insufficient. See, *e.g.*, *Strasters* v. *Weinstein & Riley PS*, 500 Fed. Appx. 682, 683 (9th Cir. 2012); *Coulthard* v. *Trott & Trott, P.C.*, Civ. No. 12-13601, 2013 WL 12119567, at *5 (E.D. Mich. Nov. 25, 2013), *report and recommendation adopted*, 2014 WL 12573975, at *4 (Mar. 31, 2014).

Such an approach complements the first category of "debt collector," which similarly takes into account an entity's overall business practices. And it accords with Congress's stated purpose in including the term "regularly" in the second category. See S. Rep. No. 382, *supra*, at 3 (noting that "[t]he requirement that debt collection be done 'regularly' would exclude a person who collects a

debt for another in an isolated instance, but would include those who collect for others in the regular course of business").

2. The complaint in this case does not come close to alleging that respondent regularly attempts to collect debts it services for others. The only allegations in the complaint concern the particular portfolio of loans at issue here. With regard to servicing, the complaint alleges only that, before purchasing the debts, "[respondent] was hired by CitiFinancial Auto as a servicer to collect on [the] * * * defaulted accounts" of petitioners (and other class members). J.A. 23. That hardly suffices to establish that respondent collects debts it services for others "as a matter of course" or "as a substantial * * * part" of its business, as the statute requires. *Schroyer*, 197 F.3d at 1176.

Faced with the obvious deficiencies in their complaint, petitioners cite materials outside the complaint to support the proposition that respondent regularly engages in other third-party servicing. See Br. 55-56 & n.53.[15] But while a court can take judicial notice of certain types of documents even at the motion-to-dismiss stage, a court may not use such documents to supply allegations that the complaint itself entirely lacks. Cf. *Kramer* v. *Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991) (permitting judicial notice of Securities and Exchange Commission filings at the motion-to-dismiss stage "not to prove the truth

---

[15] Petitioners also cite the court of appeals' opinion for the proposition that respondent regularly attempts to collect debts it services for others. See Br. 55. In the cited passage, however, the court of appeals merely set out the functions of a consumer-finance company "such as" respondent—and listed "collect[ing] debt for others" as one of those (many) functions. Pet. App. 18a-19a. That is hardly support for the specific factual proposition that respondent regularly attempts to collect debts it services for others.

of their contents but only to determine what the documents stated"). Petitioners' eleventh-hour resort to outside materials amounts to a concession that they failed to set out in their complaint well-pleaded facts establishing that respondent is a "debt collector" on their alternative theory. The Court should not rescue petitioners from their failure to preserve that theory below or to advance it in their petition for certiorari.

Before this Court, petitioners placed all of their eggs in one basket, arguing that respondent qualified as a "debt collector" simply because it purchased debts from another entity and then attempted to collect those debts for its own account. But an entity that collects debts owed or due itself is not collecting "debts owed or due * * * another." That unremarkable proposition is all the Court need accept in order to affirm the court of appeals' judgment.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

MATTHEW A. FITZGERALD
KATHERINE MIMS CROCKER
McGUIREWOODS LLP
800 East Canal Street
Richmond, VA 23219

KANNON K. SHANMUGAM
ALLISON JONES RUSHING
MASHA G. HANSFORD
BARRETT J. ANDERSON
MENG JIA YANG*
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
kshanmugam@wc.com

MARCH 2017

---

* Admitted in California and practicing law in the District of Columbia pending application for admission to the D.C. Bar under the supervision of bar members pursuant to D.C. Court of Appeals Rule 49(c)(8).